

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. OPTICAL TELEPHONE CORP., Respondent.	DOCKET NO. FCU-04-62
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued January 10, 2005)

On December 3, 2004, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for alleged cramming and slamming violations committed by Optical Telephone Corp. (Optical). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On October 8, 2004, Lyle and Judy Meyer submitted a complaint to the Board alleging their long distance company was changed without their authorization. Board staff identified the matter as C-02-223 and, pursuant to Board rules, on October 12, 2004, forwarded the complaint to Optical at the address on file for response within

ten days. On October 28, 2004, Board staff sent the complaint to Optical at the forwarding address provided by the United States Postal Service (USPS). Board staff attempted but was not able to contact Optical using the information Optical provided in the telecommunications service provider registration. Optical did not respond to the complaint. On November 24, 2004, Board staff issued a proposed resolution finding Optical in violation of Board rules by default for failing to provide a timely response to the complaint and failing to update its registration information with the Board. Board staff directed Optical to fully credit and close the account.

On October 13, 2004, Nancy Wailes of Des Moines, Iowa, submitted a complaint to the Board alleging her long distance provider was changed without her authorization and disputing charges on her telephone bill. Board staff identified the matter as C-04-224 and, pursuant to Board rules, on October 14, 2004, forwarded the complaint to Optical at the address on file for response within ten days. On October 28, 2004, Board staff sent the complaint to Optical at the forwarding address provided by the USPS. Board staff attempted but was not able to contact Optical using the information Optical provided in the telecommunications service provider registration. Optical did not respond to the complaint. On November 24, 2004, Board staff issued a proposed resolution finding Optical in violation of Board rules by default for failing to provide a timely response to the complaint and failing to update its registration information with the Board. Board staff directed Optical to fully credit and close the account.

On October 15, 2004, Roger Frederick of Waterloo, Iowa, submitted a complaint to the Board disputing charges appearing on his local telephone bill. Board staff identified the matter as C-04-228 and, pursuant to Board rules, on October 18, 2004, forwarded the complaint to Optical for response within ten days. On November 1, 2004, Board staff sent the complaint to Optical at the forwarding address provided by the USPS. Optical did not respond to the complaint. On November 22, 2004, Board staff issued a proposed resolution finding Optical in violation of Board rules by default and directing Optical to fully credit and close the account.

On October 18, 2004, Gordon Goeldner of Marengo, Iowa, submitted a complaint to the Board alleging an unauthorized change of his long distance provider and disputing charges on his telephone bill. Board staff identified the matter as C-04-239 and, pursuant to Board rules, on October 25, 2004, forwarded the complaint to Optical at the address on file for response within ten days. On November 1, 2004, Board staff sent the complaint to Optical at the forwarding address provided by the USPS. Board staff attempted but was not able to contact Optical using the information Optical provided in the telecommunications service provider registration. Optical did not respond to the complaint. On November 24, 2004, Board staff issued a proposed resolution finding Optical in violation of Board rules by default for failing to provide a timely response to the complaint and failing to

update its registration information with the Board. Board staff directed Optical to fully credit and close the account.

On October 22, 2004, Cora Orton of Dubuque, Iowa, submitted a complaint to the Board alleging her long distance provider was changed without her authorization. Board staff identified the matter as C-04-240 and, pursuant to Board rules, on October 26, 2004, forwarded the complaint to Optical for response within ten days. Optical did not respond to the complaint. On November 22, 2004, Board staff issued a proposed resolution finding Optical in violation of Board rules by default and directing Optical to fully credit and close the account.

In its December 3, 2004, petition, Consumer Advocate asserts that civil penalties are appropriate in default cases because companies could choose the most egregious cases in which to default. Consumer Advocate further asserts that the proposed resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice and that civil penalties are necessary to ensure compliance and deter future violations. Optical has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow Optical an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 3, 2004, is granted. Files C-04-223, C-04-224, C-04-228, C-04-239, and C-04-240 are docketed for formal proceedings, identified as Docket No. FCU-04-62.

2. Optical Telephone Corp. is directed to file a response to Consumer Advocate's petition on or before February 7, 2005.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 10th day of January, 2005.